Supreme Court, U.S.
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NO. 85-1549

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

G.J. DEASY INVESTMENT, INC.,
d/b/a Texas Vehicle Management,

*Petitioner,*

V.

JAMES A. MATTOX, Attorney General of the State of Texas, Russell Harding, Executive Director of the Texas Motor Vehicle Commission, Erwin Elias, Chairman of the Texas Motor Vehicle Commission, Dan Boone, Vice Chairman of the Texas Motor Vehicle Commission, and Bill Rogers, Ted Treadaway, George Miller, Rudy Garza, Sally Hermann, Robert Hoy, and Thomas Demarest, Members of the Texas Motor Vehicle Commission,

*Respondents.*

# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Whether *Rice v. Norman Williams Co.* Is Dispositive Of This Case?

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## STATEMENT OF THE CASE

Petitioner challenges the Texas legislature's decision to require a franchise from a manufacturer as a prerequisite to entitlement to a license to sell new automobiles. This challenge is foreclosed by this Court's decision in *Rice v. Norman Williams Co.*, 102 S.Ct. 3294 (1982).

## SUMMARY OF ARGUMENT

This Court should deny the Petition for Writ of Certiorari because the Fifth Circuit Court of Appeals properly concluded that the reasoning in *Rice v. Norman Williams Co., supra,* controlled this case. Petitioner does not attempt to distinguish its case from *Rice,* acknowledging that "the facts of *Rice* and

this case are basically indistinguishable." (Petition p. 10). Instead, it seeks to avoid this Court's clear directive in *Rice* on four grounds:

1) *Rice* was primarily a Supremacy Clause decision;

2) the due process challenge was considered, and rejected, for the first time on appeal;

3) this Court confused procedural due process with substantive due process;

4) this Court's decision in *Rice* was wrong and should be reversed.

The first three grounds provide no support for a review on writ of certiorari and they do not warrant further comment. The fourth ground, that this Court should reverse itself, is not supported in law or policy, as more fully discussed below.

## ARGUMENT

Petitioner claims that this Court, in rejecting the delegation and procedural due process challenges in *Rice,* "did not say what it seemed to mean." (Petition at p. 13). What this Court said in *Rice* was as follows:

> Respondents contend that the designation statute denies them due process of law. According to respondents, California has established a "second tier of private licensing over the state's licensing process," and therefore procedural due process protections apply with regard to the distiller's designation decisions.
>
> We find this contention without merit . . . . What respondents are really challenging is the California Legislature's decision to give such a power to the distiller without establishing any criteria to govern the exercise of that power. The Due Process Clause does not authorize this court to assess the wisdom of the California Legislature's decision.

*Id.* at 3301-02. (citation omitted).

Petitioner has given no reason why this Court could or should not have meant exactly what it said: the Due Process Clause does not authorize this Court to assess the wisdom of the legislature's decision. This is particularly true as applied to the Texas statute at issue. The Texas legislature, presented with evidence of widespread consumer abuse and unfair competition, made a reasoned judgment to require that applicants for motor vehicle dealer licenses have a franchise with a manufacturer. The legislature did not delegate any authority to motor vehicle manufacturers, but simply made possession of a franchise a substantive requirement for a dealer license. This substantive requirement was a reasonable and rational legislative approach to remedy the problems caused by unfranchised dealers.

Petitioner's claim that *Rice* leaves *no* safeguards against abusive legislative delegations of authority is absurd. While this Court does not sit as a "superlegislature", it properly reviews state legislation, when called upon, to determine if the legislative scheme rationally advances a legitimate state interest.

The record in this case is wholly devoid of evidence of abuse by the Texas legislature. On the contrary, the District Court correctly determined that the Texas legislature had a legitimate interest in protecting consumers from the evils associated with unfranchised dealers.

> The Harding affidavit, together with Defendants' pleadings, demonstrate that Section 5.04 was in part enacted in response to problems involving "bootleg" auto sales in Texas. The Court holds that there is no genuine issue that Section 5.04 was at least a rational attempt by the Texas Legislature to remedy problems associated with "bootleg" new car sales.

District Court Memorandum Opinion, R. Vol. 2 p. 355-356.

This Court's decision in *Rice* is a workable standard of review for state economic legislation, which has led to a fair result when

applied in this case.

## CONCLUSION

For all the foregoing reasons, Respondents pray this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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## CERTIFICATE OF SREVICE

I hereby certify that three true and correct copies of the foregoing document have been served by depositing same in the U.S. Mail, certified, return receipt requested on this the 8th day of April, 1986 to:

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Paul D. Schoonover
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Vial, Hamilton, Koch & Knox
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MARY F. KELLER